UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION DOCKET NO. 3:12-cv-00358-MOC-DSC

| WILLIAM SCHMIDT, |) | |
|-----------------------------|---|-------|
| Plaintiff, |) | |
| Vs. |) | ORDER |
| PROVIDENCE FIRE DEPARTMENT, |) | |
| Defendant. |) | |

THIS MATTER is before the court on review of the Notice of Voluntary Dismissal (#10) filed by plaintiff William Schmidt. As the court advised the parties in an email sent March 15, 2013, the Notice of Voluntary Dismissal, which was not signed by counsel for defendant, is ineffectual as an Answer had been filed by defendant prior to the filing of the notice. Rule 41(a), Federal Rules of Civil Procedure, provides, as follows:

Rule 41. Dismissal of Actions

- (a) Voluntary Dismissal.
 - (1) By the Plaintiff.
- (A) Without a Court Order. Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing:
 - (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or
 - (ii) a stipulation of dismissal signed by all parties who have appeared.

Fed.R.Civ. P. 41(a)(1)(A) (West 2013). Despite being advised by the court of the error, counsel for plaintiff has not corrected the error. The court will, therefore, strike the Notice of Voluntary Dismissal and advise the parties that this matter is on for trial during the June 2013 term.

ORDER

IT IS, THEREFORE, ORDERED that the Notice of Voluntary Dismissal (#10) is STRICKEN, and this matter is placed on the June 2013 trial calendar as provided in the Pretrial Order.

Signed: April 3, 2013

Max O. Cogburn Jr. United States District Judge